

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

“LAKE” DEFINITION AMENDMENTS)	Administrative Cause
)	Number: 08-047A
(312 IAC 1-1-21))	(LSA Document #08-286(F))

**REPORT OF PUBLIC HEARING
AND CONSIDERATION FOR FINAL ADOPTION**

I. REPORT OF PUBLIC HEARING

1. Rule Processing

On April 9, 2008, the Advisory Council discussed and recommended the proposed rule amendments be given preliminary adoption. Following this recommendation, a “Notice of Intent to Adopt a Rule” was posted in the INDIANA REGISTER for the proposed amendments on April 23 as DIN: 20080423-IR-312080286NIA. The notice identified Stephen L. Lucas as the “small business regulatory coordinator” for purposes of IC 4-22-2-28.1. The proposed new rule section was identified by the Legislative Services Agency as LSA Document #08-286. No comments were received in response to the “Notice of Intent to Adopt of Rule”.

The Natural Resources Commission gave the proposal preliminary adoption during the meeting held on May 21, 2008 following brief comments by James Hebenstreit:

James Hebenstreit, Assistant Director for the Division of Water, presented this item explaining that the Legislature created a new definition of “lake” within the Lakes Preservation Act. The rule amendment incorporates the expanded definition. “The new legislation calls for the [Department] to develop a list of public freshwater lakes, so this rule is to help facilitate that process.”

The proposed amendments to 312 IAC 1-1-21, along with the necessary fiscal impact analysis, cost-benefit analysis, statement concerning rules affecting small businesses, and a copy of the published “Notice of Intent”, were submitted to the Office of Management and Budget on April 28, 2008. In a letter dated May 16, 2008, Christopher A. Ruhl, Director of the Office of Management and Budget, recommended that the rule proposal be approved.

On May 23, the NRC Division of Hearings submitted the proposed new rule section to the Legislative Services Agency along with an “Economic Impact Statement”. On May 28, the Legislative Services Agency informed the Division of Hearings that LSA’s intended date of publication for the proposed amendments was May 30, 2008. Consistent with the intended date of publication, the Division of Hearings provided the Legislative Services Agency with a draft public hearing notification.

The Legislative Services Agency issued to the Commission an “authorization to proceed” with the rule adoption on May 28. The issuance delayed from May 30 to June 4, 2008 as the intended date of publication for the rule proposal.

On June 4, 2008, Legislative Services Agency published a notice of public hearing and the text of the proposed rule amendments in the INDIANA REGISTER. In addition, LSA published the “Economic Impact Statement” for the proposed amendments in the INDIANA REGISTER as follows:

TITLE 312 NATURAL RESOURCES COMMISSION

Economic Impact Statement
LSA Document #08-286

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses
Estimated Number of Small Business Subject to this Rule

No small businesses would be directly affected by the proposed rule changes. The amendments are mostly housekeeping measures intended to provide consistency with a new statutory definition for “lake” under IC 14-26-2 (sometimes referred to as the “Lakes Preservation Act”) and for consistency with other statutory structures where the term “lake” or “small lake” is used. The amendments clarify that man-made channels would be considered part of a lake for determining its shoreline and size, the latter factor being of greater significance with the enactment of SEA 41-2008. SEA 41 establishes five acres

as a minimum size for a “lake” governed by the Lakes Preservation Act and directs the Natural Resources Commission to develop a listing of public freshwater lakes subject to the Act.

Estimated Average Annual Administrative Costs That Small Businesses Will Incur

There will be no administrative costs to small businesses as a result of compliance with these rule section amendments.

Estimated Total Annual Economic Impact on Small Businesses

There will be no impact on small businesses as a result of compliance with these rule section amendments.

Justification Statement for Requirement or Cost

The amendments impose no requirement or cost.

Regulatory Flexibility Analysis of Alternative Methods

An alternative regulatory method is not proposed since the amendments have no impact on small businesses. The agency did not rely on any studies in its decision not to employ alternatives to the proposed rule section amendments.

In addition to publication in the INDIANA REGISTER, notice of the public hearing was published in the Indianapolis DAILY STAR (a newspaper of general circulation in Marion County, Indiana) on June 6, 2008; and, on the statewide calendar for the website of the Natural Resources Commission. The proposal was also featured on the Commission’s website for “Proposed Rules”, where a link allows a citizen to comment directly online.

The proposed new rule section would not have a total estimated economic impact greater than \$500,000 on all regulated persons as described in IC 4-22-2-28(c). The effect of the amendments is essentially housekeeping and to help minimize the likelihood of confusion resulting from differing statutory definitions for “lake” within sometimes inter-related by distinct statutory chapters. Definition clarity assists with implementing S.E.A. 41-2008.

2. Public Hearing and Other Comments

The public hearing was convened as scheduled on July 11, 2008 in Room 501, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana. No member of the public appeared for the hearing. No public comments received, either orally or in writing, outside the hearing.

3. Analysis

For consideration are amendments to the definition of “lake”. This definition is among several having general application to programs of the Department of Natural Resources. The amendments would serve several purposes in support of clarity and coordination. In addition, they would assist with establishing a listing of each “public freshwater lake” as required by new SEA 41. The amendments would clarify that the five-acre minimum size applies only to the Lakes Preservation Act. Bays and coves would be included in describing the shoreline of any lake; their inclusion has already been clarified for public freshwater lakes by SEA 41. Bays and coves would not necessarily be included for the definition of a “small lake” for purposes of determining suitability for high-speed boating. Man-made channels into public freshwater lakes would be included for determining the shoreline or size of a lake. For lakes with more than one legal elevation, the higher elevation is used to identify the characteristics of the lake for administration and regulation under DNR programs.

The amendments were perceived as housekeeping measures and were not expected to generate controversy. They have not. They are appropriate for consideration as to final adoption.

2. CONSIDERATION FOR FINAL ADOPTION

Presented for consideration by the Natural Resources Commission on final adoption are proposed amendments to 312 IAC 1-1-21 as set forth in Exhibit “A”.

Dated: July 11, 2008

Stephen L. Lucas
Hearing Officer

Exhibit “A”

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule

LSA Document #08-286

DIGEST

Amends 312 IAC 1-1-21, which defines “lake” for rules in 312 IAC, to coordinate with a definition of “lake” added by SEA 41-2008 to IC 14-26-2 (sometimes referred to as the “Lakes Preservation Act”), to include bays and coves except for the determination of a “small lake” under IC 14-8-2-259, to clarify the inclusion of channels in a “public freshwater lake”, and to specify that determinations are based upon the highest legal elevation, if a lake has more than one legal elevation. Effective 30 days after filing with the Publisher.

312 IAC 1-1-21

SECTION 1. 312 IAC 1-1-21 IS AMENDED TO READ AS FOLLOWS:

312 IAC 1-1-21 "Lake" defined

Authority: IC 14-10-2-4

Affected: IC 14-8-2-259; IC 14-15; IC 14-26-2; IC 14-26-3-1; IC 25

Sec. 21. (a) “Lake” means, except as provided in subsections (b) and (c), a reasonably permanent body of water substantially at rest in a depression in the surface of the earth, if both the depression and the body of water are of natural origin or part of a watercourse. If part of a watercourse, a lake may be formed by damming a river or stream.

(b) For purposes of IC 14-15, “lake” means a natural or an artificial lake.

(c) For purposes of IC 14-26-2, “lake” has the meaning set forth in IC 14-26-2-1.5.

~~(e)~~ (d) For purposes of IC 14-26-3, “lake” has the meaning set forth in IC 14-26-3-1.

(e) In determining the shoreline or water line of a lake, the following are included:

(1) A bay or cove, except for a determination of a small lake as defined under IC 14-8-2-259.

(2) A man-made channel connected to a public freshwater lake under 312 IAC 11-2-17, if the channel:

(A) existed on March 12, 1947;

(B) as a condition of a department license, was required to conform to IC 14-26-2-9 (or, before their repeals, to conform to IC 13-2-11-2 or IC 13-2-11.1-5); or

(C) was constructed without a department license required under IC 14-26-2 (or, before their repeals, under IC 13-2-11 or IC 13-2-11.1).

(3) If a lake has more than one (1) legal elevation, the highest legal elevation is used.

(Natural Resources Commission; 312 IAC 1-1-21; filed Dec 1, 1995, 10:00 a.m.: 19 IR 658; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895; readopted filed May 29, 2007, 9:42 a.m.: 20070613-IR-312070111RFA)